

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TIC - THE INDUSTRIAL COMPANY)
WYOMING, INC., and PIONEER)
TRAIL ENERGY, L.L.C.,)

4:10CV3153

Plaintiffs,)

v.)

MEMORANDUM AND ORDER

FACTORY MUTUAL INSURANCE)
COMPANY, and IMA OF KANSAS,)
INC.,)

Defendants.

TIC - The Industrial Company Wyoming, Inc., and Pioneer Trail Energy, LLC have filed suit against Factory Mutual Insurance Company and IMA of Kansas, Inc. to recover amounts allegedly owed on an insurance contract. Based on the allegations of the complaint, TIC entered into an agreement with Pioneer Trail to build an ethanol plant in Wood River, with Factory Mutual insuring Pioneer Trail. The complaint alleges that on or about July 3, 2008, a yeast propagation tank imploded and collapsed on the project site. Factory Mutual paid Pioneer for property damage. Pioneer and TIC entered into a settlement agreement assigning to TIC the right to pursue any additional claims from Factory Mutual Insurance. IMA is also alleged to be an insurer.

Factory Mutual served written discovery on Pioneer Trail. Pioneer Trail has not produced all documents responsive to the Factory Mutual's Requests for Production, and has failed to provide sworn answers to interrogatories. Although Pioneer Trail may be disinterested and reluctant to participate because it has no pecuniary interest in this lawsuit, it is a party to this case and is required to comply with the discovery process.

A telephonic hearing was held on defendant Factory Mutual's motion to compel. (Filing No. 49). After reviewing the evidence of record, and conferring with the parties, the court finds that defendant Factory Mutual's motion to compel should be granted in all respects.

Accordingly,

IT IS ORDERED:

- 1) On or before October 25, 2011, Pioneer Trail shall serve interrogatory answers which have been sworn under oath.
- 2) On or before October 25, 2011, Pioneer Trail shall serve full and complete responses to Factory Mutual's document discovery requests, along with a statement under oath that all responsive documents have been provided.
- 3) The failure to fully and timely comply with this order may result in sanctions under Rule 37 of the Federal Rules of Civil Procedure, and may also be a basis for initiating contempt proceedings against Pioneer Trail.

DATED this 13th day of October, 2011.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge